

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

FILED

2004 SEP 24 P 12:47

CLERK OF DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO, TEXAS  
BY                       
CLERK

UNITED STATES OF AMERICA,                     )  
   )  
          Petitioner,                                 )  
   )  
vs.   )  
   )  
\$482,627.00 IN U.S. CURRENCY,                 )  
MORE OR LESS,                                     )  
   )  
          Respondent,                               )  
   )  
vs.   )  
   )  
ONEYRA DIAZ,                                       )  
   )  
          Claimant.                                  )

CIVIL ACTION NO.  
SA-04-CA-0712-XR

**CLAIMANT ONEYRA DIAZ' ANSWER TO PETITIONER'S VERIFIED COMPLAINT  
FOR FORFEITURE**

COMES NOW ONEYRA DIAZ, Claimant in the above-entitled and numbered cause, who by and through her undersigned attorney of record files the above-captioned Answer to Petitioner's Verified Complaint for Forfeiture and as grounds would respectfully show as follows:

**I.**

Claimant admits the allegation contained in Paragraph I of Petitioner's Verified Complaint for Forfeiture.

**II.**

Claimant admits the allegations contained in Paragraph II of Petitioner's Verified Complaint for Forfeiture.

**III.**

Claimant admits the allegations contained in Paragraph III of Petitioner's Verified Complaint for Forfeiture.

**IV.**

Claimant admits that the statutes and code sections cited in Paragraph IV of Petitioner's Verified Complaint for Forfeiture exist.

**V.**

Claimant admits the allegation contained in Paragraph V of Petitioner's Verified Complaint for Forfeiture and Claimant would add the name and address of Claimant's undersigned attorney of record.

**VI.**

Claimant admits the allegations contained in Paragraph VI of Petitioner's Verified Complaint for Forfeiture.

**VII.**

Claimant denies the allegation contained in Paragraph VII of Petitioner's Verified Complaint for Forfeiture.

**VIII.**

Claimant denies and/or is without sufficient present knowledge to either admit or deny the allegations contained in the first paragraph of Paragraph VIII of Petitioner's Verified Complaint for Forfeiture.

Claimant denies and/or is without sufficient present knowledge to either admit or deny the allegations contained in the second paragraph of Paragraph VIII of Petitioner's Verified Complaint for Forfeiture.

Claimant denies and/or is without sufficient present knowledge to either admit or deny the allegations contained in the third paragraph of Paragraph VIII of Petitioner's Verified Complaint for Forfeiture.

Claimant denies and/or is without sufficient present knowledge to either admit or deny the allegations contained in the fourth paragraph of Paragraph VIII of Petitioner's Verified Complaint for Forfeiture.

Claimant denies and/or is without sufficient present knowledge to either admit or deny the allegations contained in the fifth paragraph of Paragraph VIII of Petitioner's Verified Complaint for Forfeiture.

Claimant denies and/or is without sufficient present knowledge to either admit or deny the allegations contained in the sixth paragraph of Paragraph VIII of Petitioner's Verified Complaint for Forfeiture.

Claimant denies and/or is without sufficient present knowledge to either admit or deny the allegations contained in the seventh paragraph of Paragraph VIII of Petitioner's Verified Complaint for Forfeiture.

**X.<sup>1</sup>**

Claimant denies the allegations contained in Paragraph X of Petitioner's Verified Complaint for Forfeiture.

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<sup>1</sup> This section should have been numbered IX in Petitioner's Verified Complaint for Forfeiture, however, it is numbered X, as is the next section.

**X.**

Claimant denies the allegations contained in Paragraph X of Petitioner's Verified Complaint for Forfeiture.

**XI.**

Claimant denies the allegations contained in Paragraph XI of Petitioner's Verified Complaint for Forfeiture.

**XII**

**AFFIRMATIVE DEFENSES**

1. Agent's seizing the Respondent property did not have probable cause to believe that the property was forfeitable under the laws of the United States.
2. The Respondent property does not constitute money furnished or intended to be furnished in exchange for a controlled substance, it does not represent proceeds traceable to such an exchange, and is not money used or intended to be used to facilitate a violation of the Controlled Substances Act, and is not forfeitable to the United States of America.
3. Seizure of the Respondent property in this case was obtained in violation of the 4<sup>th</sup> Amendment to the United States Constitution. Moreover, there has been a hearing held concerning the seizure of the Respondent property in Cause No. SA-04-CR-079-XR, wherein United States District Judge Xavier Rodriguez suppressed the seizure of the Respondent property. Claimant not only relies on the 4<sup>th</sup> Amendment as a defense, but asserts that the order suppressing the evidence in Cause No. SA-04-CR-079-XR is "res judicata" on this issue.

4. Claimant also asserts the defense that the mere transportation of money is not a violation of 18 U.S.C. §1956 et seq. See *United States vs. Puig-Infante*, 19 F.3d 929 (5<sup>th</sup> Cir. 1994).

WHEREFORE, PREMISES CONSIDERED, Claimant urges the Court to deny the government's Verified Complaint for Forfeiture and to return to Claimant the seized property. Claimant also prays for attorney's fees and costs expended in this action, plus such other and further relief, general or special, at law or in equity, to which the Claimant may show herself to be justly entitled.

Respectfully submitted,



JOSEPH (SIB) ABRAHAM, JR.

Attorney for Claimant

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Texas State Bar No. 00821000

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this the 23 day of September, 2004, a true and correct copy of the foregoing instrument was mailed to Diana Cruz-Zapata, Assistant United States Attorney, 601 N.W. Loop 410, Suite 600, San Antonio, Texas 78216.



JOSEPH (SIB) ABRAHAM, JR.